

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>SEBCO LAUNDRY SYSTEMS, INC.</b>	:	ORDER
	:	DTA NO. 820489
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Income Taxes under	:	
Article 22 of the Tax Law and the New York City	:	
Administrative Code for the Periods January 1, 2001	:	
through September 30, 2001 and January 1, 2002 through	:	
December 31, 2002.	:	

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Petitioner, SEBCO Laundry Systems, Inc., 30 Route 22 West, Green Brook, New Jersey 08812, filed a petition for redetermination of a deficiency or for refund of New York State and New York City income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the periods January 1, 2001 through September 30, 2001 and January 1, 2002 through December 31, 2002.

A hearing was scheduled before Administrative Law Judge Brian L. Friedman at the offices of the Division of Tax Appeals, Riverfront Professional Tower, 500 Federal Street, Troy, New York, on Tuesday, December 27, 2005 at 10:30 A.M. Petitioner failed to appear and a default determination was duly issued. Petitioner has made a written request dated February 2, 2006 that the default determination be vacated. The Division of Taxation filed a response to petitioner's application to vacate the default dated February 3, 2006.

Petitioner, SEBCO Laundry Systems, Inc., appeared by Steven E. Breitman, its president. The Division of Taxation (“the Division”) appeared by Christopher C. O’Brien, Esq. (John E. Matthews, Esq., of counsel).

Upon a review of the entire case file in this matter as well as the arguments presented for and against the request that the default determination be vacated, Chief Administrative Law Judge Andrew F. Marchese issues the following order.

***FINDINGS OF FACT***

1. For the periods here at issue, the Division of Taxation issued to petitioner seven notices and demands relating to penalty and interest imposed due to late payment of income tax withheld from petitioner’s employees. Petitioner requested a conciliation conference in the Bureau of Conciliation and Mediation Services (“BCMS”). Initially, BCMS issued a Conciliation Order Dismissing Request since the request was received by BCMS more than 90 days after the notices had been mailed. On April 20, 2005, petitioner filed a petition with the Division of Tax Appeals protesting the seven notices. On June 9, 2005, BCMS advised the Division of Tax Appeals that the Conciliation Order Dismissing Request had been rescinded and accordingly that petitioner would be receiving a conciliation conference.

2. On June 15, 2005, the Division of Tax Appeals requested that petitioner withdraw its petition with the Division of Tax Appeals with the understanding that petitioner could file a new petition if it was not satisfied with the outcome of its conciliation conference. Petitioner was asked to sign a Stipulation for Discontinuance of Proceedings upon Rescission of a Conciliation Order Dismissing a Request. Petitioner was also advised that if the stipulation was not returned, a hearing would be scheduled for petitioner.

3. Petitioner failed to return the signed stipulation. Accordingly, on November 21, 2005 the Division of Tax Appeals mailed to petitioner a Notice of Hearing scheduling a hearing for December 27, 2005 at the offices of the Division of Tax Appeals in Troy, New York. On November 23, 2005, Mr. Matthews of the Division of Taxation contacted petitioner's president and again asked him to sign the Stipulation of Discontinuance since a hearing in the Division of Tax Appeals was no longer necessary. Petitioner once again failed to return the signed stipulation.

4. On December 27, 2005 at 11:05 A.M., Administrative Law Judge Brian L. Friedman called the *Matter of SEBCO Laundry Systems, Inc.*, involving the petition here at issue. Present was John E. Matthews, Esq., as representative for the Division of Taxation. Petitioner did not appear through an officer or employee, and no representative appeared on its behalf. Mr. Matthews moved that petitioner be held in default. On January 27, 2006, Administrative Law Judge Friedman issued a determination finding petitioner in default.

5. On February 2, 2006, petitioner filed an application to vacate the January 27, 2006 default determination. In the application, petitioner's president explained that it was his understanding that the hearing had been canceled because petitioner and the Division of Taxation had entered into a stipulation of discontinuance. Attached to petitioner's application is a stipulation of discontinuance signed by Mr. Breitman and Mr. Matthews and dated November 25, 2005 and November 23, 2005, respectively. The Division of Tax Appeals had never received the signed stipulation before February 6, 2006, the date the application to vacate was received.

6. On February 3, 2006, Mr. Matthews filed the Division's response to the application to vacate. In his response, Mr. Matthews indicated that he had spoken with Mr. Breitman on several occasions and had twice written to him to persuade him to sign the stipulation. Mr.

Matthews indicated that, “It was clear to me that he was satisfied with the settlement he received through BCMS, but never seemed able to send out the stipulation on time.” Mr. Matthews indicated that he had never received the stipulation from petitioner.

### ***CONCLUSIONS OF LAW***

A. As provided in the Rules of Practice and Procedure of the Tax Appeals Tribunal, “In the event a party or the party’s representative does not appear at a scheduled hearing and an adjournment has not been granted, the administrative law judge shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear.” (20 NYCRR 3000.15[b][2].) The rules further provide that: “Upon written application to the supervising administrative law judge, a default determination may be vacated where the party shows an excuse for the default and a meritorious case.” (20 NYCRR 3000.15[b][3].)

B. There is no doubt based upon the record presented in this matter that petitioner did not appear at the scheduled hearing or obtain an adjournment. Therefore, the administrative law judge correctly granted the Division’s motion for default pursuant to 20 NYCRR 3000.15(b)(2) (*see, Matter of Zavalla*, Tax Appeals Tribunal, August 31, 1995; *Matter of Morano’s Jewelers of Fifth Avenue*, Tax Appeals Tribunal, May 4, 1989). Once the default order was issued, it was incumbent upon petitioner to show a valid excuse for not attending the hearing and to show that it had a meritorious case (20 NYCRR 3000.15[b][3]; *see also, Matter of Zavalla, supra; Matter of Morano’s Jewelers of Fifth Avenue, supra*).

C. On the date of the default determination, petitioner and the Division had already resolved this matter and the seven notices had become fixed and final based upon whatever terms petitioner and the Division had agreed to. The default determination issued on January 27, 2006 had no effect other than to close the case within the Division of Tax Appeals. Of course, it

would have been unnecessary if petitioner had completed a stipulation of discontinuance as requested. In any event, since this matter was already closed, it would be pointless to reopen it just so that it could be closed again.

D. It is ordered that the application to vacate the default determination be, and it is hereby, denied and the Default Determination issued on January 27, 2006 is sustained.

DATED: Troy, New York  
April 6, 2006

/s/ Andrew F. Marchese  
CHIEF ADMINISTRATIVE LAW JUDGE